

REMARKS

INTRODUCTION

In accordance with the foregoing, claims 1, 2, 10 and 14 have been amended, and new claims 15-17 have been added. No new matter has been submitted.

Claims 1-2 and 10-14 stand rejected, claims 5-9 have been withdrawn from consideration, and claim 3 and 4 have been indicated as including allowable subject matter.

In view of the following remarks, reconsideration of the finality of the outstanding Office Action, as well as the allowability of the pending claims, is respectfully requested.

Claims 1-17 are pending and under consideration.

REQUIREMENT FOR INFORMATION

The Office Action has requested information regarding Firehunter® (Firehunter) publications cited in the outstanding Office Action, with regard to the use/sale of Firehunter before the filing of the present application, as the Examiner has interpreted the specification in paragraph [0018] to mean that Firehunter alone can implement the presently claimed invention.

The Office Action would also appear to be requesting a copy of "Hewlett-Packard Firehunter Concepts Guide, printed in April 1999, and having part no. 5969-2201." Applicants are attempting to locate a copy of this guide and will forward the same shortly, if available. We have enclosed a 2002 Firehunter Concepts Guide, where page 8 particularly indicates that Firehunter/e-commerce, which is covered by the presently claimed invention, is a separate product from the Firehunter product, also cited in the Office Action. It is noted that the 2002 Firehunter Concepts Guide is not prior art and is only be submitted to help clarify the issues.

Regardless, in view of the following, it is respectfully submitted that even if this guide is not found, the contents of the same still would not disclose the presently claimed invention or sale of the same.

Paragraphs [0018] and [0019], of the present specification, both point out that the presently claimed invention could make use of Firehunter, though the same does not disclose or suggest all the claimed features of the presently claimed invention. Paragraph [0019], for example, points out that "Gathering [] infrastructural and business measurements[, collected by embodiments of the present invention,] together into a system like Firehunter

then enables correlated results, such as lost sales due to system errors and the impact of system load on the rate and number of business transactions." Similarly, the cited paragraph [0018] merely states that a user site, receiving data collected the embodiments of the present invention, can be an Internet service management solution such as Firehunter products offered by Agilent Technologies that enables a user to measure and monitor an e-commerce solution's performance.

Thus, the reference to Firehunter is only to illustrate a system that could be used in conjunction with embodiments of the present invention. Further, the Firehunter publications cited in the Office Action would merely appear to correspond to the invention environment of the also cited Bartz et al., U.S. Patent No. 6,701,342, with both describing a quality of service monitoring for service-level agreements, unrelated to e-commerce, which is an inventive aspect of the present application.

The specification in paragraph [0019] clearly indicates that the present invention's application for e-commerce is related to at least "key business and financial measures such as the number of new orders per minute, the dollar volume of completed orders per minute, the number of abandoned 'shopping cars' per minute, etc." As noted below, the independent claims have been amended to more clearly emphasize this e-commerce aspect.

Further, neither Bartz et al. nor Firehunter disclose or suggest the claimed server being tiered based on e-commerce responsibilities. Thus, they are not the same invention and do not disclose or suggest the claimed invention. The claimed differentiation between servers, based on e-commerce responsibilities, is not disclosed or suggested in either Bartz et al. or Firehunter.

Neither Bartz et al. nor Firehunter were designed to monitor e-commerce as a process, as claimed. Conversely, as noted below, Bartz et al. and Firehunter are actually designed to monitor IPSs for SLA compliance, i.e., whether a service is received by the subscriber within acceptable parameters, such as server response times, for example.

Different from these aspects of Bartz et al. and Firehunter, embodiments of the presently claimed invention is directed toward monitoring "business and financial" performances, such as the above referenced portion of paragraph [0019] of the outstanding specification. Some of the independent claims even particularly claim the business performance aspect, with further depending claims setting forth the more particular financial performance aspect.

Lastly, it is noted that that products related to the presently claimed invention were not released until after the filing of the provisional application for the present application, noting

that the present application claims priority from this provisional application.

Thus, in view of the above, it is respectfully submitted that the disclosure Firehunter cannot be considered a use or sale of the presently claimed invention.

Accordingly, withdrawal of this requirement for production of information is respectfully requested.

REJECTION UNDER 35 USC 112

Claim 10 stands rejected under 35 USC § 112, first paragraph, for containing subject matter not described in the specification in a way to reasonably convey to one skilled in the relevant art, at the time the application was filed, had possession of the claimed invention.

In view of the above amendments to claim 10, it is respectfully requested that this rejection be withdrawn. Independent claim 10 has been amended to recite "performing user transaction tests and reporting user transaction test results," which are accordingly supported by the present specification.

The specification details in the Background of the Invention the operation of testing e-commerce web sites with a stimulus and measuring the result, and further details in the Detailed Description of the Invention the operation of agent programs "tests," including server application tests and log readers. See the present specification in paragraphs [0011] and [0014] as examples.

Accordingly, withdrawal of this rejection is respectfully requested.

REJECTION UNDER 35 USC 102

Claim 1 stands rejected under 35 USC § 102 as being anticipated by Bartz et al., U.S. Patent No. 6,701,342. The body of the rejection references claims 2 and 14 as well, so the following traversal will similarly address these claims.

As noted above, Bartz et al. would not appear to disclose the claims e-commerce aspect of the presently claimed invention. The Office Action has apparently inferred that Bartz et al. discloses the claimed e-commerce feature. Accordingly, it is respectfully requested that the particular portions of Bartz et al. being relied upon to make this inference be particularly identified.

Conversely, Bartz et al. is directed toward the analysis of a service already being provided to monitor a quality of service for a subscriber. Though the operation of Bartz et al. relies on similar underlying components or structures, the operations of the system of Bartz et al. and that of an e-commerce system, like the presently claimed invention, are different.

Bartz et al. is not related to e-commerce, as encompassed by the presently claimed invention.

Independent claims 1 and 14 have been amended to further emphasize the claimed e-commerce feature, as previously claimed, i.e., with the claimed tiered e-commerce arrangement. Similarly, claims 1 and 10 has been amended to emphasis that the servers each have separate e-commerce responsibilities.

Regarding the claimed servers being tiered according to separate e-commerce responsibilities, the Office Action appeared to infer that the different servers in different DMSs 1, 2, 3 and 4, in Bartz et al., disclosed this claimed tiered arrangement.

However, the different DMSs 1, 2, 3, and 4 in Bartz et al. are merely different Diagnostic Measurement Servers (DMSs) in the overall network of Bartz et al. Each DMS "is capable of obtaining measurement information from various resources throughout the network, such as, for example, DHCP servers, DNS servers, proxy servers, radius servers, web servers, etc ... The DMS 1 is also capable of obtaining measurement information from various network backbone resources such as, for example, routers 6, and from point-of-presence (POP) resources such as, for example, terminal server 7, router 8 and modem bank 9. The DMS 1 is also capable of collecting measurement data from client premises equipment 10 and 11." Bartz et al. in col. 4, lines 36-46.

These capabilities of the DMS are for the aforementioned determining of the quality of service of the Service Level Agreements for a subscriber. Implementations of these capabilities are not for the claimed e-commerce responsibilities. Further, any interpreted tiered relationship between any of DMS 1, 2, 3, or 4, cannot be characterized as related to e-commerce responsibilities. The independent claims have claimed particular assignments and operations of the claimed servers related to separate e-commerce responsibilities.

Further example of these e-commerce responsibilities can be seen in newly independent claim 2, which particularly identifies the claimed plurality of tiers comprise a web servers tier, a session servers tier, a transaction servers tier, and a database servers tier. As detailed in the specification, these tiers correspond to their respective separate e-commerce responsibilities.

Thus, it is respectfully submitted that Bartz et al. fails to disclose or suggest all the claimed features, as claimed.

Therefore, for at least the above, it is respectfully requested that this rejection be withdrawn and claims 1, 2, and 14 be allowed. For at least similar rationale, it is respectfully submitted that claims depending from claims 1, 2 and 14 are equally in proper condition for

allowance.

REJECTION UNDER 35 USC 103

Claims 10-13 stand rejected under 35 USC § 103(a) as being obvious over Firehunter, noting that the Examiner appears to be relying on the Firehunter literature provided in the outstanding and previous Office Actions. This rejection is respectfully traversed.

By way of review and as an example, independent claim 10 sets forth:

"[a] method of operating a computer system to test and monitor an e-commerce installation comprising a web server, a session server, a transaction server, and a database server, each having separate e-commerce responsibilities, the method comprising:

performing user transaction tests and reporting user transaction test results;

measuring system performance data for each of the web server, the session server, the transaction server, and the database server; and

measuring business performance data comprising monetary volume transacted by the e-commerce installation during a time period."

The Office Action would appear to be stating that it would have been obvious to combine all the features from the different Firehunter literature into a combination disclosing all the claimed feature of the presently claimed invention.

However, the Office Action would merely appear to recite which features are disclosed by separate Firehunter publications, conclude that both underlying systems operates similarly, and then concludes that one of the Firehunter publications (Firehunter/L 3.0), therefore, would disclose the presently claimed invention. Thus, it is unclear if the rejection is a proper § 103 obviousness rejection, or whether the Office Action is stating that Firehunter (Firehunter/L 3.0) must inherently disclose the presently claimed invention based on the operation of Firehunter/Pro 2.0.

First, there would not appear to be sufficient support in the Office Action to surmise that the two Firehunter systems operate identically. Further, if the outstanding Office Action is actually an obviousness rejection, then the rejection has failed to provide the required motivation for such a proffered modification of Firehunter/L 3.0.

Regardless, as pointed out above, Firehunter fails to disclose the claimed e-commerce feature, as well as the more detailed, and distinguished, web server, session server, transaction server, and database server. Further, independent claim 10, like independent claims 1 and 14, further defines these separate servers as having separate e-

commerce responsibilities.

Lastly, if the Office Action maintains the outstanding rejection, Applicants respectfully request the Examiner particularly point out which systems in Firehunter (and the aforementioned Bartz et al.) which are being relied upon to support the conclusion that the claimed e-commerce feature is being performed in Firehunter (and Bartz et al.), as well as which particular servers are being relied upon to disclose the claimed web server, session server, transaction server, and database server, each having separate e-commerce responsibilities.

Thus, it is respectfully submitted that Firehunter, alone or under the proffered modification, fails to disclose all the claimed features of the presently claimed invention, as a whole.

Therefore, for at least the above, it is respectfully requested that this rejection of independent claim 10 be withdrawn and independent claim 10 be allowed. For at least similar rationale, it is respectfully submitted that claims depending from independent claim 10 are also in proper condition for allowance.

CONCLUSION

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Date: _____

9/17/04

Respectfully submitted,

By: _____

Stephen T. Boughner
Registration No. 45,317